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July 27, 2005

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 25, 2005

Case Number: TSO-0217

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup> A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

**I. Background**

For several years, the individual has been employed in a position that requires him to hold a DOE security clearance. Unresolved questions regarding the individual's suitability to hold an access authorization arose in May 2004 after the individual informed the LSO that he had filed a Chapter 7 Bankruptcy Petition that same month, his third bankruptcy filing since 1981. After inquiring about the circumstances surrounding the individual's most recent bankruptcy filing, the LSO initiated formal administrative review proceedings in January 2005 when it informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of one potentially disqualifying criterion. The relevant criterion is set forth in the security regulations at 10 C.F.R. § 710.8, subsection l (Criterion L).<sup>2</sup>

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

<sup>2</sup> Criterion L relates, in relevant part, to information that a person has "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion,

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations and requested an administrative review hearing. On April 5, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, two witnesses testified. The individual presented his own testimony and that of one other witness. The LSO did not call any witnesses. The LSO did, however, submit 25 exhibits into the record; the individual tendered no exhibits.

## **II. Regulatory Standard**

### **A. Individual's Burden**

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9<sup>th</sup> Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

### **B. Basis for the Hearing Officer's Decision**

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

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exploitation, or undue duress which may cause the individual to act contrary to the best interests of national security . . . " 10 C.F.R. § 710.8 (l). Such conduct or circumstances for purposes of Criterion L include, but are not limited to a pattern of financial irresponsibility.

### III. Findings of Fact

The essential facts in this case are not in dispute. Between 1981 and 2004, the individual has sought protection under the Bankruptcy Code three times. He filed a Chapter 13 Bankruptcy Petition in 1981 and 1996 and a Chapter 7 Bankruptcy Petition in 2004. Transcript of Hearing (Tr.) at 17, 19, 22. Prior to his most recent bankruptcy filing, the individual owned six cars and was paying \$2700 per month for all his car loans, excluding insurance. *Id.* at 20. The individual currently owns a truck and a car, the latter which he purchased two months before the hearing in this case. *Id.* at 24-25, 39. The individual is also currently behind in his child support payments. *Id.* at 26.

### IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).<sup>3</sup> After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

#### A. Whether the Individual's Bankruptcy Filings Constitute a Security Concern

When a person files for bankruptcy, a security concern arises not from the bankruptcy filing *per se*, but rather from the circumstances surrounding a person's bankruptcy and his or her attendant financial problems. See *Personnel Security Hearing* (Case No. VSO-0509), <http://www.oha.doe.gov/cases/security/vso0509.pdf>; *Personnel Security Hearing* (Case No. VSO-0414), 28 DOE ¶ 82,794 (2001); *aff'd*, 28 DOE ¶ 83,025 (2001) (affirmed by OSA, 2001). When reviewing the access authorization of a person who has filed for bankruptcy relief, I must focus on how the person reached the point at which it became necessary for him or her to seek the help of the bankruptcy court in order to regain control of his or her financial situation through the legal discharge of his or her debts. See *Personnel Security Hearing* (Case No. VSO-0288), 27 DOE ¶ 82,826 (1999), *aff'd*, 28 DOE ¶ 83,004 (2000) (affirmed by OSA, 2000). Thus, in this case I must consider whether legitimate financial hardship necessitated the individual's multiple bankruptcy filings or whether the three bankruptcy filings result from the individual's irresponsible behavior.

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<sup>3</sup> Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

From the record in this case, it appears that it was the individual's irresponsible financial behavior that led to all three of his bankruptcy filings. Between 1981 and 2002, the individual was married five times. According to the individual, he had a tendency to purchase "nice" items for his wives and when his marriages failed he was left with debt. Ex. 24 at 10-14; Tr. at 21. He also admitted that he was a car fanatic and purchased six vehicles between 1999 and 2000. Ex. 24 at 20-21, 48-51. Excluding car insurance, the individual's car payments totaled \$2700 per month. Tr. at 20. During the Personnel Security Interview (PSI) in 2004, the individual related that his long term financial difficulties stemmed from his overspending and lack of budgeting. Ex. 24 at 82.

Because most of the expenses incurred by the individual prior to his three bankruptcy filings were discretionary, I find that the DOE correctly invoked Criterion L when it suspended the individual's security clearance. The individual's conduct in maintaining a lifestyle that was not commensurate with his income raises questions whether he may be subject to pressure, coercion, exploitation or duress.

**B. Whether Mitigating Circumstances Justify the Restoration of the Individual's Access Authorization**

The individual claims that his most recent financial difficulties were compounded by his ill health that prevented him from working overtime at his place of employment. Tr. at 22. Further exacerbating his financial woes, according to the individual, was a 30% reduction in pay that he incurred when he was placed on short-term disability by his employer after he suffered a knee injury. *Id.* at 44.

At the hearing, the individual testified that he has tried to improve his financial situation since his last bankruptcy filing by spending less money, only purchasing essential items,<sup>4</sup> and increasing his hours at his part time seasonal business. *Id.* He added that he does not plan on getting himself into a precarious financial situation in the future. *Id.* at 47. He concluded his testimony by asserting that he would never do anything to jeopardize national security in general, and in particular, would never accept any bribe even if he were "dead broke." *Id.*

The individual's supervisor testified that he is aware of the individual's three bankruptcy filings and that the individual spent a lot of money on cars. *Id.* at 14. He stated further that he is aware that the individual has tried to improve his financial outlook by selling some of his cars and working harder at his part-time business. *Id.* The supervisor added that the individual is a good worker who motivates his co-workers. *Id.* at 9. Finally, the supervisor related that the individual is currently on short-term disability and is drawing only 70% of his base salary. *Id.* at 15. The supervisor further advised that on June 30, 2005, the individual's short-term disability will be terminated and he might be placed on long-term disability. *Id.* According to the supervisor, the individual will only draw 60% of his base pay if he is placed on long-term disability status.

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<sup>4</sup> The individual testified that he no longer has a land-line telephone. *Id.* at 28. He testified that to economize, he only uses his cell phone. *Id.*

In evaluating the evidence presented by the individual, I note that once a pattern of financial irresponsibility has been established, it is the individual's burden to demonstrate a new pattern of financial responsibility. See *Personnel Security Hearing* (Case No. VSO-0509), <http://www.oha.doe.gov/cases/security/vso0509.pdf>; *Personnel Security Hearing* (Case No. VSO-0108), 26 DOE ¶ 82,764 (1996) (affirmed by OSA, 1997). Based on the record before me, I find that the individual has not presented sufficient evidence to mitigate the security concerns associated with his long term pattern of financial irresponsibility.

After listening to the individual's testimony and observing his demeanor at the hearing, I believe that the individual has good intentions with regard to his financial future. However, since the individual lacks a financial plan or goal to maintain solvency in either the short term or the long term and still has outstanding financial obligations, I am unable to find that the individual will be successful in sustaining a financially responsible lifestyle. The evidence that I considered in reaching this conclusion is the following. First, the individual testified that he never considered financial counseling despite his history of financial difficulties. Ex. 24 at 99. Second, the individual presented no evidence that he has either developed, or is adhering to, a budget. Third, the individual has no savings account or mutual funds. Ex. 24 at 116. Fourth, the individual has little money in his 401(k) account even though he is nearing retirement. *Id.* at 98.<sup>5</sup> With regard to his current financial obligations, I was surprised to learn at the hearing that the individual is not current on his child support payments.<sup>6</sup> I was also surprised to learn at the hearing that the individual paid almost \$15,000 to purchase a used vehicle in March 2005 when he already owned a truck. *Id.* at 39. When I asked at the hearing why he does not sell his car or truck to conserve resources, he responded that the money he owes on both vehicles exceeds the value of each of the vehicles. *Id.* at 33. Moreover, the individual still owes the Internal Revenue Service \$1800 for the nonpayment of taxes. Finally, the individual obtained a credit card with a \$300 limit and is currently carrying a balance on the card with an interest rate of 19%. *Id.* at 35. In the end, none of the factors set forth above augur in the individual's favor.

Even had the individual provided evidence that he is currently conducting his financial affairs in a responsible manner, I could not make a predictive assessment at this point that the individual will remain financially responsible in the future. Since the individual's most recent bankruptcy filing, only one year has elapsed. A person who has filed bankruptcy protection three times based on his financial irresponsibility needs to demonstrate a lengthy, sustained period of meeting all his bills and financial obligations in order to mitigate the security concerns associated with his long-term pattern of financial irresponsibility. In this case, that period will not even begin to run until the individual becomes current on his outstanding financial obligations.

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<sup>5</sup> I also noted that it is likely that the individual's income will be reduced by 10% if he is converted from short-term disability to long-term disability. I only accorded neutral weight to this factor because the individual receives a monthly military pension of \$1,000. The steady supplemental income that the individual receives might cushion the effect of a 10% salary reduction.

<sup>6</sup> The individual claims that he does not pay alimony to any of his five ex-wives. Tr. at 25.

## **VI. Conclusion**

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn  
Hearing Officer  
Office of Hearings and Appeals

Date: July 27, 2005